(2) (4)

Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

CRIMINAL APPEAL NO. 69 **/2006**

APPELLANTS

IN JAIL

1. Kunjam Suppa
   S/o Bodda Muria, aged about 35 years, R/o Village – Burkapal P.s Chita Gufa District- Dantewara C.G.
2. Sodi Muda ~~P.S. Kanker,~~
   S/o Kosa Muria, aged about 25 years, R/o Village – Burkapal P.s Chita Gufa District- Dantewara C.G.

417/06

Filed on 28/01/06
Nisha Chaturvedi
Advocate

R. to D.R. (J)

VERSUS

RESPONDENT The State of Chhattisgarh

S.T. No. - 85/99
Offence U/s – 302 R/w 34 of I.P.C.
Court of III A.S.J., Jagdalpur, C.G.

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(16)

आदेश पत्रक

मामला क्रमांक Cr.A.No. 69/06 सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH
HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

30-3-2006:-

Smt. Kiran Jain, counsel for the appellants.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Heard on M.(Cr.)P. No.194/2006 for condonation of delay in filing the appeal.

As per the office report, the appeal has been filed with a delay of 2196 days.

For the reasons mentioned in the application, it is allowed. Delay in filing the appeal is condoned.

Also heard on admission.

The appeal is **admitted** for consideration.

With the consent of learned counsel for the parties, the appeal is being disposed of finally.

PER L.C. BHADOO, J.

By this appeal, the accused/appellants have questioned the legality and correctness of the judgment of conviction and order of sentence dated 20-11-99 passed by the 3rd Additional Sessions Judge, Jagdalpur in S.T. No.85/99 whereby learned 3rd Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302 read with Section 34 of the I.P.C., sentenced each of the accused/appellants to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The case of the prosecution, in brief, is that PW-1 Kunjam Malla gave a merg intimation (Ex.-P/1) to the Police Station Chintagufa to the effect that yesterday morning Podiyami Ganga of village Bhinpa came and informed that your nephew Kunjam Kama yesterday i.e. on Saturday went to the market Chintalnar but he has not returned. On Sunday at about 4 p.m. Kunjami Suppa and Sodi Muda brought the body of Kunjam Kama in a basket in front of the house and they left the place after leaving the body. He went near the body, saw the body and found that Kunjam Kama was already dead. Blood was oozing out of the mouth and nose. There was swelling on the neck and there were abrasions on the back. Village Sarpanch and other persons were informed on which Panchayat was convened and enquiry was made from the village Burkapal. On enquiry, it was revealed that deceased Kunjam Kama along with accused Kunjami Suppa and Sodi Muda went to the market. When they were returning, some quarrel took place between the accused persons and the deceased in connection with return of money which was paid to the deceased by the accused persons. The accused persons attacked the deceased with hands, fists and kicks. Neck of the deceased was twisted after pressing the neck.

Receiving this report, Station House Officer registered crime No.6/98 on 15-12-98 under Section 302/34 of the I.P.C. The Investigating Officer prepared Panchanama (Ex.-P/3) of the dead body of the deceased. The dead body was sent for postmortem examination to the Primary Health Centre, Chintalnar where Dr. R.S. Bhati conducted the postmortem on the dead body of Kunjam Kama and prepared the postmortem report Ex.-P/4. The site plan (Ex.-P/5) was prepared.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, Sukma who in turn committed the case to the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sessions Judge, Jagdalpur from where learned 3rd Additional Sessions Judge received the case on transfer for trial.

The prosecution examined 6 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which the accused persons denied the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the respective counsel and perusal of the record, convicted and sentenced each of the accused/appellants as mentioned in earlier part of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Kunjam Kama is not in dispute.

As far as involvement of the accused/appellants in committing the murder of Kunjam Kama is concerned, there is no direct evidence and whole case rests on the circumstantial evidence i.e. extra judicial confession which is said to have been made by the accused persons before PW-1 Kunjam Malla, PW-2 Kunjami Deve and PW-3 Podiyami Ganga. In order to base the conviction on the circumstantial evidence the Court is required to ascertain that the charge against the accused has been established by the prosecution based on the following settled principles of law:-

1. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
2. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
3. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

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4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Now we shall proceed to examine the evidence adduced by the prosecution.

Learned counsel for the accused/appellants argued that in the first instance, First Information Report was lodged 3 days after the incident as the names of real culprits were not known to the complainant. Moreover, only after exerting pressure and coercion on the accused persons in the Panchayat, the accused persons made extra judicial confession under coercion, therefore, the report was lodged with a delay of 3 days.

On the other hand, learned counsel for the State/respondents supported the judgment of the trial Court.

Having heard learned counsel for the parties and having perused the evidence of these 3 witnesses, we are of the opinion that argument advanced by learned counsel for the accused/appellants has substance because PW-1 Kunjam Malla, father of the deceased, has stated that he asked Podiyami Ganga to find out as to who has murdered his son, on which Panchayat was convened in which the accused persons were also summoned. The Panchayat members asked the accused persons that you have committed murder, on which the accused persons said that they have committed murder. Accused Suppa informed that his Rs.1,000/- was outstanding against the deceased. Similarly accused Muda informed that his Rs.500/- was outstanding against the deceased. In the cross-examination, he has stated that as accused Suppa and Muda had brought the deceased,

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therefore, it was thought that they might have committed the murder. It is correct to say that Panchayat members with a force asked the accused persons that you have committed murder of the deceased. It is also correct that under the fear the accused persons confessed the crime. In the cross-examination by A.G.P. again this witness has stated that it is correct to say that since many persons asked the accused persons about the death, therefore, under the fear the accused persons confessed the commission of crime before the Panchayat. Similar is the evidence of PW-2 Kunjami Deve. In the cross-examination, she has stated that Panchayat was convened in the morning and in the first instance, the accused persons had not confessed the crime, therefore, Panchayat was again convened in the afternoon in which the accused persons confessed the crime. It is correct to say that next day Panchayat was continued till evening and till the accused persons had not confessed the crime. It is correct to say that Podiyami Ganga came to their house to inform her about the death of deceased Kunjam Kama, at that time, Kunjam Malla asked Podiyami Ganga as to who has committed murder of his son, then Podiyami Ganga said that he does not know who has committed murder of his son. PW-3 Podiyami Ganga has also stated that in the Panchayat it was decided that since the accused persons brought the body of the deceased, therefore, enquires should be made from them. When they have not committed the murder then why they have brought the dead body. In the first instance, the accused persons did not confess the crime before the Panchayat, thereafter the accused persons confessed the crime. Every Panch slapped the accused persons. In the cross-examination, it is stated that when Panchayat members were about to beat the accused persons, they confessed the crime. In the cross-examination, he has also stated that in the first day of Panchayat the accused persons did not confess the crime and the next day Panchayat was again convened in which the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused persons did not confess the crime, in which influential persons were there who asked the accused persons that since you have brought the dead body, therefore, you people might have murdered the deceased, on which the accused persons confessed the crime.

In view of the above evidence of these 3 witnesses, it cannot be termed as voluntary confession. In the evidence of these 3 witnesses it has come on record that in the first instance, it was not known that who has committed murder of the deceased. Even the Panchayat was convened and in that Panchayat the accused persons, in the first instance, did not confess before the Panchayat, therefore, they were slapped, even influential persons asked them as they had brought the dead body, therefore, they had committed murder, on which the accused persons confessed the crime. Therefore, any confession made under coercion and which is not voluntary cannot be made a basis for convicting the accused. In order to rest the conviction on the extra judicial confession the primary requirement of law is that extra judicial confession must be voluntary and true, therefore, from the evidence of these three witnesses, extra judicial confession which was said to have been made by the accused persons has not stood up to the test of voluntary confession. For the foregoing reasons, conviction cannot be sustained.

In the result, appeal succeeds and same is allowed. Conviction and sentence imposed on the accused/appellants under Section 302/34 of the I.P.C. are set aside. The accused/appellants are acquitted of the said charge. The accused/appellants be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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